



# புதுச்சேரி மாநில அரசிதழ்

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SOMMAIRES

CONTENTS

பக்கம்	Page	Page
தொழில் நீதிமன்றத் தீர்ப்புகள்.. 360	Sentence arbitral du travail .. 360	Award of the Labour Court .. 360
அரசு அறிவிக்கைகள் .. 371	Notifications du Gouvernement .. 371	Government Notifications .. 371
சாற்றறிக்கைகள் .. 377	Annonces .. 377	Announcements .. 377
திருத்தம் .. 377	Corrigenda .. 377	Corrigenda .. 377

**GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT**

(G.O. Rt. No. 41/AIL/Lab./T/2020,  
Puducherry, dated 17th March 2020)

**NOTIFICATION**

Whereas, an Award in I.D. (L) No. 32/2017, dated 21-01-2020 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between the management of M/s. Nexus Electro Steel Ltd., Unit-I, Mettupalayam, Puducherry and Thiru J. Anandan and A. Sakthivel, Puducherry, over re-instatement and back wages has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

**S. MOUTTOULINGAM,**  
Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL AT  
PUDUCHERRY**

*Present : Thiru V. PANDIARAJ, B.Sc., LL.M.,  
Presiding Officer.*

*Tuesday, the 21st day of January, 2020.*

**I.D. (L) No. 32/2017**

1. J. Anandan,
2. A. Sakthivel  
Rep. by K. Mohandoss,  
State General Secretary,  
NRTUC of Nexus Electro Employees. . . Petitioners

*Versus*

The Chairman/Managing Director,  
M/s. Nexus Electro Steel Ltd., Unit-I,  
Plot No. B-53, 54 and 55,  
PIPDIC Industrial Estate,  
Mettupalayam, Puducherry. . . Respondent

This industrial dispute coming on 06-01-2020 before me for final hearing in the presence of Thiruvalargal R.T. Shankar, P. Suresh, A. Ashok Kumar, B. Balamurugan and L.K. Saravanan, Counsels for the petitioners and Thiruvalargal K. Velmurugan and P. Preethi, Counsels

for the respondent, upon hearing, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

**AWARD**

1. This Industrial Dispute has been referred by the Government of Puducherry as per the G.O. Rt. No. 82/AIL/Lab./T/2017, dated 17-05-2017 for adjudicating the following:-

(a) Whether the dispute raised by Thiruvalargal J. Anandan and A. Sakthivel, Puducherry against the management of M/s. Nexus Electro Steel Ltd., Mettupalayam, Puducherry, over re-instatement and back wages is justified or not? If justified, what relief they are entitled to?

(b) To compute the relief if any, awarded in terms of money if, it can be so computed?

2. *The brief averment of the petition filed by the petitioner:-*

(i) The respondent is a Public Limited Company having the business of production of steel plates, used in transformers. The petitioners are the employees of the respondent company and they are the Officer Bearers of the union namely, NRTUC, which has one K. Mohandoss as General Secretary. The petitioner were working in the Production Department from 2006, receiving very low salary of ₹ 7,500 per month and they demanded wage increase/revision from the respondent employer and therefore, they are in the process of forming a Trade Union for collective bargaining, negotiations with the respondent. The respondent sensed the formation of Trade Union and started all sorts of unfair labour practices against the members of the Trade Union. It has tried to deprive the workman from claiming their legal rights under Labour Laws. It has also tried to wipeout the petitioners and their Union from the respondent company. To achieve the same, it has transferred the petitioners from Puducherry to Chennai and dismissed the petitioners and thereafter, it has revoked the order after the Conciliation Proceedings before the Labour Officer, Puducherry. Thereafter, the respondent management foisted false case of theft of silicon-sheets weighing 1.5 tonnes against this petitioners and a false case was also registered in Mettupalayam Police Station, by misusing their powers. The management has suspended these petitioners and conducted a formal *ex parte* enquiry without giving proper opportunity to these petitioners to represent their case and it has violated the principles of natural justice during the

enquiry proceedings. There was no reference in the enquiry report as to the date of examination of management side witnesses and it was also silent about their evidence. It has not contained any explanations, as to, how the charges were proved. It has failed to consider the justifications given by these petitioners in its report. To wipeout the Trade Union from the respondent management it has passed the dismissal order on 25-10-2014 against these petitioners. The management has taken the law into their hands, to do all sorts of unfair labour practices against these petitioners to deprive them from claiming any legal rights. The enquiry was not conducted in a free and fair manner. They have refused to give sufficient opportunities to these petitioners to defend their case. It has also refused to mark not even a single document on the side of these petitioners and it has deliberately issued the *ex parte* report. These petitioners were not permitted to examine even single witnesses on their part. The dismissal order was passed with crucial mind. Though it is not possible to commit theft of 1.5 silicon-sheets by two men, the report was given in favour of the management. The witnesses shown in the F.I.R was also, not belongs to be company. They were invented for the purpose of filing the abovesaid case. The management has not taken any steps to file complaint against the security personnel who worked in the factory at the relevant point of time. These petitioners were dismissed in violation of Section 33 of Industrial Disputes Act, 1947. These petitioners have not gainfully employed after the termination. Therefore, these petitioners have to be reinstated with full back wages and with all other monetary benefits and this industrial dispute have to be allowed as justified.

3. *The brief averment of the counter filed by the respondent:-*

(i) The respondent denied all the allegations except those are specifically admitted in its counter. The petitioners were employed as factory supervisor and their last pay drawn wage is ₹ 8,500 per month. They cannot be treated as workman under section 2(s) (iv) of the Industrial Disputes Act and therefore, this Court is not having jurisdiction to entertain his application and it has to be dismissed in limine. The petitioner has filed this petition through the Trade Union by namely NRTUC of Nexus Electro Employees Union, but, it is not a registered one, under the Trade Union Act, 1926 and hence, this industrial dispute has to be dismissed.

(ii) The respondent management has not threatened the members of the Trade Union as alleged in the claim petition and it has not induced anybody to

come out from the Trade Union. The respondent management has not involved in any kind of threat, by saying that they will loose more and more. Further, there is no such Trade Union as alleged in the claim petition. The respondent management is facing heavy competition and financial crisis in the international market and it is getting very few orders from its customers for transformer lamination work. It has incurred heavy loss during 2013 to 2017. The respondent management was almost on the verge of closure due to financial crisis, non-cooperation and pressure by their bankers. In order to meet out the cost of production and administrative expenses it has decided to start the new value added process *i.e.*, core building in the Pondicherry unit. Its sister concern M/s. Current Electricals Limited, Chennai is doing the same job of core building at Chennai.

(iii) The management has decided to send one supervisor from Pondicherry unit to Chennai, so as to learn the process of core building for shorter period and to teach the same to the remaining supervisors in Pondicherry unit. Therefore, it has transferred the petitioner by name Anandan to the Chennai unit for the purpose of learning the process of core building. But, the so called Anandan made wrong propaganda among the other employees by stating that the management has decided to transfer all the employees to Chennai unit and thereby it has decided closed down the Puducherry unit shortly. Further, the petitioners by name Sakthivel and Anandhan along with four other supervisors confined the Executive Director in the factory premises when he is about to leave to Chennai on 14-03-2013. Further, on 15-03-2013 the petitioners stopped the production work and forcibly prevented the other workers from doing any sort of work in the factory. The Work Manager by name, R. Arumugam instructed them to resume their work, but, they have dis-obeyed his words and prevented the others from doing their work. On 16-03-2013 these petitioners and other workers went on strike inside the factory premises and they have caused a production loss of ₹ 3,00,000 per day to the management. The management has dismissed the petitioner by name Sakthivel, Anandhan and four other supervisors after conducting the Disciplinary Proceedings in fair manner. Thereafter, they have approached the Labour Officer, (Conciliation), Puducherry on 22-05-2013. During the Conciliation Proceedings they have tendered apology letter and they were reinstated on 31-07-2013 as per the 12(3) settlement in the presence of the Labour Officer (Conciliation), Puducherry.

(iv) During the month of April 2013 the Manager by name R. Arumugam and the staff by name, Manoharan and Sugumar inspected the go down where the silicon-sheets were kept. To their shock and surprise it was found that 1.5 tonnes of silicon-sheets found to be missing. On enquiry by the said Arumugam with staffs and employees it was found that the supervisors by name Sakthivel and Anandhan have jointly committed theft of the silicon-sheets weighing 1.5 tonnes from the factory premises. In this regard, a theft case was registered in Cr.No. 115/2013 on 11-12-2013 in Mettupalayam Police Station and in pursuance of that these petitioners by name, Sakthivel and Anandane were remanded to Judicial custody and they got released on bail. Thereafter, they were suspended on 24-12-2013 for the charge of theft. The charge-memo, dated 04-03-2014 was also issued to the petitioners. Mr. G. Arumugam, Advocate was appointed as an Enquiry Officer in this regard. The petitioner Sakthivel and Anandane has wantonly prolonged the Enquiry Proceedings by seeking unnecessary adjournments right from the date commencement till the date of conclusion. They have also got unnecessary adjournment under the pretext of appointment of defence Assistance. Though the Enquiry Officer has given sufficient opportunity, these petitioners failed to appoint anybody for their defence and failed to cooperate with the proceedings. The management has examined Arumugam, Iyyadurai and Krishnaraj as their witness on the side of the management. It has marked 6 exhibits during the Enquiry Proceedings. The Enquiry Officer has conducted the entire proceedings by following principles of natural justice and he has given fair chances to these petitioners to defend themselves and he has submitted his report on 16-10-2014. Thereafter, these petitioners have given an undated representation to the management and to the Enquiry Officer for reopening of the enquiry proceedings. They have delayed the proceedings by showing their health condition and the pendency of the case before the Hon'ble High Court, Madras, and they have quoted the same reasons for reopening. Per which the management has given a detailed reply on 24-01-2015, wherein, it has stated that the Enquiry Proceedings were adjourned at the request of these petitioners on 08-08-2014, 22-08-2014 and 08-09-2014. Further, the Enquiry Officer has made these petitioners as *ex parte* as a lost resort on 23-01-2014. Secondly, it has stated that these petitioners have not produced any Medical Certificate regarding their bad health condition. Further, these petitioners have not produced

the case number pending before the Hon'ble High Court and they have given S.R. number only. Further, this petitioner were set *ex parte* and therefore, the further hearing dates were not informed to them. Further, the management has given subsistence allowance to these petitioners as per law. The management has dismissed these petitioners for their proven misconduct after adopting all the legal formalities. The management has issued the gratuity amount by cheques, though they were not entitled for any gratuity amount. The petitioner has suppressed all these facts and filed the claim statement with *mala fide* intention and they were not entitled for any claim as claimed in the claim petition and hence, this industrial dispute has to be dismissed with cost.

4. On the side of the petitioners only one witness was examined and Ex.P1 to Ex.P41 was marked. On the side of the respondent two witnesses were examined and Ex.R1 to Ex.R63 was marked.

5. The petitioner side Counsel argued that these petitioners functioned as the Office Bearers of the Trade Union namely, Nexus Electro Thozhilalar NRTUC and hence, they were victimized by way of the charge-sheet, dated 18-03-2013. It is further argued, that these petitioners are coming under the category of workmen under the respondent management and they cannot be treated as supervisor as alleged in the counter. The petitioner side Counsel further argued that these petitioners were falsely alleged to have committed theft of silicon-sheets weighing 1.5 tonnes and thereby they were subjected to Disciplinary Enquiry, which was conducted in a biased manner and against the principles of natural justice. Further, the petitioner side Counsel argued that these petitioners were not given chances to cross-examine the witnesses and they were not allowed to produce their defence witnesses and documents. It is further argued that it is impossible to commit theft of 1.5 tonnes of silicon-sheets and therefore, these petitioners were falsely charge-sheeted, and they were subjected to false Criminal case also. The petitioner side Counsel argued that the respondent management has adopted the unfair labour practices which was brought into light by these petitioners and therefore, they were falsely shown as accused in Cr.No. 115/2013 of Mettupalayam Police Station, Puducherry, for the alleged offence under section 381 IPC r/w 34 IPC. The petitioner side Counsel further argued that no action was taken by the management against the security personnel, though they were on duty all along the period of alleged commission of theft. It is further argued that the management has failed to examine the eye witnesses to prove the alleged commission of theft by these petitioners. It is also



argued by the petitioner Counsel that the entire factory was under CCTV surveillance and if at all any offence is committed in and around the factory premises, then it could be, very well find out, from the CCTV footage. But, the respondent management has failed to produce the CCTV footage to prove the alleged misconduct of theft. It is further argued that no eye witnesses were examined in the disciplinary proceedings. It is further argued that the so called eye witnesses by name, Ajay and Chand Basha were not examined by the Enquiry Officer. Further, the enquiry report does not contain the date of examination and the name of the witnesses examined on the side of the respondent. It is further argued that, the enquiry report was silent about the justification given by these petitioners. It is further argued that these petitioners were not permitted to participate in the enquiry proceedings and it was conducted behind the back of these petitioners. The Enquiry Officer has not fairly and properly conducted the enquiry and has given report against these petitioners without necessary proof and evidences and hence, he prayed to allow this industrial dispute as justified one.

6. The respondent side Counsel argued that these petitioners are not workmen under section 2(s)(iv) of Industrial Disputes Act and therefore, this industrial dispute is fit for dismissal in toto. It is further argued that there is no Trade Union as alleged in the claim petition namely Nexus Electro Thozilalargal NRTUC and hence, the present industrial dispute filed under section 10(B) of the Industrial Disputes Act is not maintainable from the beginning itself. It is further argued the Disciplinary Proceedings were conducted in a fair and proper manner and these petitioners have purposefully failed to appear before the Enquiry Officer and thereby dragged the matter. It is further argued that, since, these petitioners were set *ex parte* for their willful non-appearance before the Enquiry Officer and they cannot claim anything before this Court and hence, he prayed to dismiss the claim made by these petitioners.

#### 7. Points for consideration:

Whether the dispute raised by Thiruvallargal J. Anandan and A. Sakthivel, Puducherry, against the management of M/s. Nexus Electro Steel Ltd., Mettupalayam, Puducherry, over, re-instatement and back wages is? To compute the relief if any, awarded in terms of money if, it can be so computed?

#### 8. On the Point:

The first limb of argument on the side of the respondent is that these petitioners are not workmen and they have worked as supervisors in the respondent factory and therefore, they cannot be

considered as workmen as per section 2(s) (iv) of Industrial Disputes Act 1947. *Per contra* the petitioner side Counsel argued that these petitioners are workmen in the respondent management and they have not worked as supervisors at any time in the respondent management and hence, he prayed to reject the argument advanced by the respondent Counsel in this regard. In support of his argument he has requested this Court to consider the document, dated 31-07-2013 (Ex.P20) wherein, these petitioners have been shown as workmen. This Court inclined to go through the document marked as Ex.P20, dated 31-07-2013. The abovesaid document is nothing, but, the 12(3) settlement arrived between the management and the workmen in the presence of the Conciliation Officer, Puducherry. As per the abovesaid settlement, dated 31-07-2013, the dismissal order passed by the respondent management against 6 supervisors including the petitioners for the alleged incident of gherao of the Executive Director of the company on 14-03-2013, in agitation of their transfer order, dated 20-03-2013 (Ex.P7) was amicably settled later on 31-07-2013 (Ex.P20), In Ex.P20 these petitioners signed as representative of the workmen only. Their category or designation was not specifically mentioned in the abovesaid document. Therefore, from and out of the abovesaid document Ex.P20, this Court was unable to come to the conclusion that these petitioners are the workmen at the relevant point of time.

9. At this juncture, this Court inclined to go through the other documents that were marked on either side. On the side of these petitioners Ex.P1 and Ex.P2 was marked. It was the document of show-cause notice, for the previous incident that took place on 14-03-2013 and on subsequent, dates 15-03-2013 and 16-03-2013. In Ex.P1 and Ex.P2 these petitioners were shown as supervisors and not as workmen. Furthermore, as per the claim statement these petitioners said to have received salary of ₹ 7,500 per month. Hence, as per the abovesaid pleadings also these petitioners cannot be considered as workman under section 2 (s) (iv) of the Industrial Dispute Act. Further, these petitioners have marked the document, dated 28-03-2013 as Ex.P9, wherein, the petitioner by name Anandane has stated that the respondent management has extracted supervisory work from him. Similarly, the other petitioner by name Sakthivel also stated the same fact in his letter, dated 28-03-2013 which was marked as Ex.P10. Thus, from the Ex.P9 and Ex.P10, this Court was able to come to the conclusion that these petitioner themselves admitted that they worked as supervisors in the respondent management. Furthermore, these petitioners themselves marked Ex.P25, dated 11-12-2013, F.I.R in which their

occupation was shown as supervisors. Further, in Ex.P33, P35 and P36 these petitioners were shown as supervisors in the respondent factory. Furthermore, the petitioner by name Sakthivel himself admitted that he worked as supervisor in the respondent factory in his letter, dated 30-06-2015 which was marked as Ex.P38 addressed to the Labour Officer (Conciliation), Puducherry. Similarly, he again confirmed his designation as supervisor in his letter, dated 23-07-2015 marked as Ex.P39 addressed to the Labour Officer (Conciliation), Puducherry. Furthermore, in the document, dated 30-11-2015 marked as Ex.P40 addressed by the Trade Union to the Labour Officer (Conciliation), Puducherry, the Trade Union has shown these petitioners as supervisors to the contract employees in the respondent company. Thus, it is clear from Ex.P1, P2, P9, P10, P25, P33, P35, P36, P38, P39 and P40, that these petitioners worked as supervisors in the respondent factory.

10. At this juncture, this Court inclined to go through the documents marked on the respondent side such as Ex.R1 to R15 and Ex.R57 to R60. The documents marked as Ex.R1 to R4 are nothing, but, the leave applications submitted by these petitioners before the respondent management during their service at various of point of time and in these documents, these petitioners shown them as supervisors. Thus, Ex.R1 to R4, crystal clearly proved that these petitioners worked as supervisors in the respondent factory. Ex.R5 to R10 are the letters written by these petitioner to the respondent management at various point of time. In all these letters, these petitioners mentioned themselves as supervisors under the respondent management. Thus, it is also clear from Ex.R5 to R10 that these petitioners are not workmen, but, they have worked as supervisors in the respondent management. Furthermore, on perusal of Ex.R11 to R15, it is found that the other petitioner by name Sakthivel also worked in the abovesaid factory as supervisor. Ex.R11 to R15, the leave letters of the petitioner Sakthivel clearly indicates that his nature of work in the respondent factory as supervisor only. Further, the petitioner by name, Anandan and Sakthivel has sent individual letter on 17-02-2015 to the Labour Officer (Conciliation), Puducherry. The abovesaid documents were marked as Ex.R57 and R58, wherein, the petitioners themselves admitted their designation as supervisor in the very first line of the first paragraph itself. In Ex.R61, the failure report has also stated these petitioners as supervisors. Hence, from and out of the abovesaid documents this Court was able to come to the conclusion that these petitioners worked as supervisors and not as workmen in the respondent factory. Hence, the argument advanced by the respondent Counsel in this regard was accepted and these petitioners were considered as supervisors and not as workman and it was answered in favour of the respondent management.

11. The next limb of argument that was advanced by the respondent Counsel is that there is no registered Trade Union in the name of Nexus Electro Thozilalar NRTUC, Puducherry. *Per contra*, the petitioner side Counsel argued that the NRTUC is the registered Trade Union and the Nexus Electro Thozilalar NRTUC, Puducherry is an affiliated one with the main Trade Union by name NRTUC. Further, the petitioners has not produced any registration number for the Trade Union namely, Nexus Electro Thozilalar NRTUC, Puducherry. Therefore, the argument advanced in this regard that these petitioners Trade Union was not in existence as alleged by the respondent Counsel is accepted. However, the abovesaid fact does not affect or influence the independent decision of this case.

12. The main/prime point of argument advanced by the petitioner Counsel is that these petitioners were falsely arrived as accused for the alleged offence under section 381 IPC r/w 34 IPC and based on that these petitioner were falsely charged-sheeted with an intention to victimize them, by the management. It is further argued that the Domestic Enquiry was not conducted in a fair and proper manner and therefore, the petitioner side Counsel prayed to set aside the dismissal order and prayed to allow this industrial dispute as justified. *Per contra*, the respondent side Counsel argued that these petitioners have committed the alleged theft of 1.5 tonnes of silicon-sheets and therefore, they were charge-sheeted and the enquiry was conducted in a fair and proper manner. To analyse these aspects this Court inclined to go through the evidences and documents adduced on both sides.

13. The petitioners have pleaded and deposed that it is impossible to commit theft of 1.5 tonnes of silicon-sheets from the godown by two men and therefore, the allegation of theft is concocted and fabricated one. It is further deposed that the failure of the respondent management to take action against the security personnel's and failure to produce the CCTV footages of the factory premises and failure to examine the eye witness and the other witnesses by name Ajay and Chand Basha and failure to produce the case property would probablise the case of the petitioners as alleged in the claim petition. But, in this regard, RW.2 complainant by name, Arumugam has deposed that the total 1.5 tonnes of silicon-sheets were not stolen from the factory on a single day and the theft was committed on various days in between April 2012 to April 2013. Further, RW.1 has deposed that the theft was committed on various dates and it was committed in small quantities such as 10, 20, 30 kgs. in an interval of 10, 15, 20 days. Further, RW.1 and RW.2 has deposed that the CCTV Camera was not under function at the

relevant point of time. This part of evidence probalizes the genuinity in the evidence of RW.1 and RW.2. Furthermore, Ex.R63 Stock register marked on the respondent side probablises the case of theft. Furthermore, as per Ex.P25, the FIR was also registered against these petitioner and the charge-sheet was also filed against these petitioners and the name of the so called Chand Basha and Ajay names were also included in the list of witnesses in the charge-sheet. It has also probablized the allegation of theft of silicon-sheets against these petitioners. Above all these petitioners have compromised the case with the respondent/management. If, at all the case against the petitioners is false and fabricated, they need not compound the same with the respondent/management. Above all it is not the duty of this Court to go through all these things to find out whether the FIR is true or not and it is the duty of the petitioners to defend the case of theft and they have to obtain the order of acquittal from the Court, if at all their stand is true. But, they have failed to do so. Hence, the argument advanced on the side of the petitioners that false FIR was registered against these petitioners was unable to be accepted by this Court.

14. Now, the Court has to analyse whether the principles of natural justice were followed during the domestic enquiry proceedings. The petitioners have pleaded and deposed that the Enquiry Officer has refused to give sufficient opportunity to them and refused to mark even a single document on their side and he deliberately and wantonly made them as *ex parte* in the Enquiry Proceedings. It is further deposed that they were not permitted to examine even a single witness on their side. *Per contra*, RW.1 has deposed that right from the date of commencement of Enquiry Proceedings these petitioners sought adjournments for one or other reasons and wantonly prolonged the Enquiry Proceedings by seeking unnecessary adjournments under the pretext of appointment of defence Assistance. He further deposed that though it was granted, these petitioners failed to utilize the same, despite several adjournments. He further deposed that the Enquiry Officer has passed the *ex parte* order against these petitioners only as a last resort. He has further deposed that the enquiry proceedings were commenced on 25-07-2014 and the Enquiry Proceedings were adjourned to 08-08-2014, 22-08-2014, 08-09-2014 and 23-09-2014. He has deposed that the Enquiry Officer has given more than two months time to these petitioners to engage their defence assistance. He further deposed that despite several adjournments these petitioners have neither chosen to appoint their defence assistance nor cooperated with the Enquiry Officer to proceed with

enquiry. To substantiate this part of evidence these petitioners have marked the enquiry report, dated 17-10-2014, marked as Ex.R44. The second page of the abovesaid enquiry report contains all the abovesaid details. For the sake of convenience the extract in the second page of the enquiry report, to make them as *ex parte* is given below:

"I have commenced the domestic enquiry on 25-07-2014 after duly informing the charge-sheeted employee and the management. During the 1st hearing *i.e.*, on 25-07-2014, the charge-sheeted employee was present and the management was represented by Mr. P.T. Manoharan. I have read out and explained the charges set out against the charge-sheeted employee in the charge memo. The charge-sheeted employee denied the charges attributed in the charge memo. As such I have explained, the procedures to be followed in the enquiry and the principles of natural justice to both the parties before the commencement of Enquiry Proceedings. During the enquiry proceeding, the charge-sheeted employee sought for adjournment for appointing his defence Assistant. As such the enquiry was adjourned to a later date, dated *i.e.*, on 08-08-2014. Again during the subsequent hearings held on 08-08-2014, 22-08-2014 and 08-09-2014, the charge-sheeted employee sought for adjournment for appointing his defence Assistant in the domestic enquiry. Acting upon this, the Enquiry Proceeding was again adjourned to 23-09-2014. Thus, several opportunities were given to the charge-sheeted employee but, the charge-sheeted employee used to drag the proceedings either on the pretext of appointing defence Assistant or on the pretext of illness. On 23-09-2014, the charge-sheeted employee has failed to appear in the enquiry proceedings without any sort of communication to the Enquiry Officer. Since, the attitude of the charge-sheeted employee reveals that he is not interested to participate in the enquiry proceedings, the charge-sheeted employee was set *ex parte* on 23-09-2014. As such, the management was asked to let in evidence in support of the charge laid against the charge-sheeted employee."

15. Therefore, the allegation by the petitioners against the Disciplinary Proceedings, not found to be true. Thus, Ex.R44 speaks in volume that *ex parte* order was not made willfully and these petitioners alone have kept them away from the enquiry proceedings for the reasons known to them best.

16. The petitioner has marked the document, dated 22-03-2014 Ex.R47, wherein, they have stated that the Enquiry Officer has violated the Hon'ble Supreme Court



order in Civil Appeal No.30371 to 30376/2012, dated 21-31-2014 arising out of the special leave petition. But, these petitioners have not filed any Supreme or High Court order. Furthermore, they have not produced any stay order before the Enquiry Officer to stay the Enquiry Proceedings. Therefore, it is found that there is no violation of principles of natural justice. Though they have failed to produce the Hon'ble Supreme Court order in Civil Appeal No. 30371 to 30376/2012, the enquiry has been adjourned for two months period as per Ex.R48. Even then, these petitioners failed to engage their Defence Assistance. Thus, as per Ex.R48 these petitioners were provided with two months time to have their defence conveniently and this would go to show that the respondent management has given sufficient opportunity to these petitioners. On perusal of Ex.R49, it seems that these petitioners have failed to produce the medical records and the stay order of the Hon'ble High Court. Further, it also shows that the termination order was passed only after getting explanation from these petitioners. Furthermore, PW.1 has deposed that “எங்கள் மீது பொய்யான வழக்கு என்ற காரணத்தினால் அந்த விசாரணையில் நாங்கள் கலந்து கொள்ளவில்லை. This part of evidence shows that these petitioners themselves have not attended the Enquiry Proceedings and they have failed to produce any documents or witnesses on their side. It further shows that they were not prevented either by the management or by the Enquiry Officer to produce their side evidence or documents. It also shows that they themselves failed to participate in the enquiry and failed to cross-examine the witnesses produced on the side of the management. It also shows that their non-participation in the Enquiry Proceedings is according to their own decision and not as alleged in the claim petition. Hence, this Court found no violation of principles of natural justice by the management or by the Enquiry Officer. Therefore, the plea of violation of principles of natural justice by the management as alleged by the petitioner is not accepted by this Court.

17. At this juncture, the petitioner side Counsel marked the citation reported in CDJ 2019 SC 436. The abovesaid judgment was rendered in Civil Appeal No.3339/2019 in the case of

Raj Narain

Vs.

Union of India and others

Wherein, the order of the Hon'ble High Court with respect to payment of back wages was challenged before the Hon'ble Supreme Court. In the abovesaid case, the Hon'ble Supreme Court has held that the delinquent was entitled to get back wages from the date of his

acquittal. The present case on hand is not similar to that therefore, the abovesaid citation is decided as irrelevant to the case on hand. The other citation produced on petitioner side is CDJ 2019 Delhi High Court page: 441. The abovesaid citation was rendered in the case of

Swift Securitas:(P) Ltd.

Vs.

Gulshan Sharma and another

wherein, the Hon'ble High Court has held that the tribunal has to first consider whether a legal and valid inquiry in consonance with principles of natural justice has been held. If, the said inquiry is found to be valid it is not for the Tribunal to interfere with the findings arrived at in the inquiry unless the same found to be perverse. It is also held that there is an omission to hold inquiry or the inquiry is held to be defective that it is open for Labour Court to take evidence itself regarding the alleged misconduct of the workman. But, here in this case, the management has appointed Mr. G. Arumugam, Advocate as Enquiry Officer and conducted the enquiry after giving sufficient opportunity to these petitioners, despite these petitioners failed to appear before the Enquiry Officer, which resulted in the *ex parte* enquiry report. It is not a defect on the part of the management but, it is a defect on the part of these petitioners only. Furthermore, the management has issued charge-memo, received the explanation, appointed the Enquiry Officer, offered necessary adjournments and then, it has passed termination order after issuance of second show-cause notice and the reply for the same from these petitioners. All these things show that there was no violation of principles of natural justice. Hence, this point is answered in favour of the management.

18. The next point for the determination is whether it has to interfere with the punishment awarded by the management. At this juncture, this Court inclined to go through the citation filed by the respondent management. As per the judgment reported in CDJ 2006 SC 928, when the employee is found guilty of theft there is nothing wrong in the corporation losing the confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment. Here, in this case, also these petitioners are alleged to committed theft of 1.5 tonnes of silicon-sheets from the management in an interval period of one year. Being the supervisors, they must be very honest and they must extent their fullest integrity to the management, but, here they themselves indulged in the commission of alleged theft. Therefore, this Court considers that there is no warrant for interference in the punishment awarded by the management.



20. In the result, the termination order, dated 07-11-2014 was decided as a valid one and the industrial dispute raised by these petitioners against the Nexus Electro Steel Ltd., over their termination is decided as unjustified and this reference is answered accordingly. No cost.

Dictated to Stenographer, transcribed by him, corrected and pronounced by me in the Open Court on this the 21st day of January, 2020.

**V. PANDIARAJ,**  
Presiding Officer,  
Industrial Tribunal-cum-  
Labour Court, Puducherry.

*List of petitioner's witness:*

PW1 — 07-03-2018 Anandan

*List of petitioner's exhibits:*

Ex.P1 — 18-03-2013 Photocopy of the show-cause notice issued by the respondent management to Anandhan.

Ex.P2 — 18-03-2013 Photocopy of the show-cause notice issued by the respondent management to Sacthivel.

Ex.P3 — 18-03-2013 Photocopy of the show-cause notice issued by the respondent management to Sivakumar.

Ex.P4 — 18-03-2013 Photocopy of the show-cause notice issued by the respondent management to Mourougaperoumanne.

Ex.P5 — 18-03-2013 Photocopy of the show-cause notice issued by the respondent management to Karunakaran.

Ex.P6 — 18-03-2013 Photocopy of the show-cause notice issued by the respondent management to Parthibane.

Ex.P7 — 20-03-2013 Transfer order issued by the respondent management to Anandhan.

Ex.P8 — 25-03-2013 Reply letter for the transfer order submitted by Anandhan to the respondent management.

Ex.P9 — 28-03-2013 Reply for suspension letter submitted by Anandhan to the respondent management.

Ex.P10 — 28-03-2013 Reply for suspension letter submitted by Sacthivel to the respondent management.

Ex.P11 — 28-03-2013 Reply for suspension letter submitted by Sivakumar to the respondent management.

Ex.P12 — 28-03-2013 Reply for suspension letter submitted by Mourougaperoumanne to the respondent management.

Ex.P13 — 28-03-2013 Reply for suspension letter submitted by Karunakaran to the respondent management.

Ex.P14 — 28-03-2013 Reply for suspension letter submitted by Parthibane to the respondent management.

Ex.P15 — 04-04-2013 Letter sent to the Labour Commissioner the Union.

Ex.P16 — 04-04-2013 Letter submitted by the Trade Union before the Assistant Manager of the respondent management.

Ex.P17 — 10-05-2013 Letter submitted by the Trade Union before the Labour Officer.

Ex.P18 — 13-05-2013 Second show cause notice issued to Anandhan from the respondent management.

Ex.P19 — 22-05-2013 Letter submitted by the Trade Union before the Labour Officer.

Ex.P20 — 31-07-2013 12(3) Settlement signed by the respondent management with the petitioner union.

Ex.P21 — 12-08-2013 Transfer order for training to the Chennai Unit sent by the respondent management to Anandhan.

Ex.P22 — 01-10-2013 Letter submitted by the Trade Union before the respondent management.

Ex.P23 — 01-10-2013 Letter submitted by the Trade Union before the respondent management for requesting bonus.

Ex.P24 — 07-10-2013 Form-L submitted by the petitioner union before the respondent management.

Ex.P25 — 11-12-2013 FIR Report.

Ex.P26 — 16-12-2013 Reply letter submitted by the respondent management before the Labour Officer.

Ex.P27 — 16-12-2013 Reply letter submitted by the respondent management before the Labour Officer.

Ex.P28 — 24-12-2013 Letter submitted by the Trade Union before the Labour Officer/Conciliation,

Ex.P29 — 24-12-2013 Suspension order issued by the respondent management to Anandhan.

Ex.P30 — 24-12-2013 Suspension order issued by the respondent management to Sathivel.

Ex.P31 — 17-02-2014 Letter sent for suspension allowance to Anandhan from the respondent management.

Ex.P32 — 04-03-2014 Letter issued by the respondent management to Sathivel.

Ex.P33 — 13-03-2014 Reply letter issued to the respondent management by Sathivel.

Ex.P34 — 04-03-2014 Letter issued by the respondent management to Anandhan.

Ex.P35 — 13-03-2014 Reply letter issued to the respondent management by Anandhan.

Ex.P36 — 19-03-2014 Letter issued by the respondent management to Anandhan.

Ex.P37 — 22-03-2014 Reply letter issued to the respondent management by Anandhan.

Ex.P38 — 30-06-2015 Letter submitted by the Sathivel before the Labour Officer.

Ex.P39 — 23-07-2015 Letter submitted by the Sathivel before the Labour Officer.

Ex.P40 — 30-11-2015 Letter submitted by the Trade Union before the Labour Officer.

Ex.P41 — Copy of the Failure Report submitted by the Labour Officer, conciliation, Puducherry.

*List of respondent's witnesses:*

RW.1 — 08-08-2019 P.T. Manohar

RW.2 — 12-09-2019 Arumugam

*List of Respondents exhibits:*

Ex.R1 — Leave Application Form of J. Anandan, dated 02-12-2008.

Ex.R2 — Leave Application Form of J. Anandan, dated 22-08-2011.

Ex.R3 — Leave Application Form of J. Anandan dated, 17-05-2012.

Ex.R4 — Leave Application Form of J. Anandan, dated 08-03-2013.

Ex.R5 — Objections regarding the enquiry report 31-10-2014, dated 17-10-2014 and proposed punishment letter, dated 25-10-2014 of the J. Anandhan.

Ex.R6 — Objections regarding the enquiry report, dated 17-10-2014 and Proposed Punishment letter, dated 25-10-2014 of the A. Sakthivel.

Ex.R7 — Original Cheque return by J. Anandhan to the respondent management with requisition to reopen the enquiry proceedings conducted against him.

Ex.R8 — Original Cheque return by A. Sakthivel to the respondent management with requisition to reopen the enquiry proceedings conducted against him.

Ex.R9 —	Letter, dated 05-02-2015 submitted by the J. Anandhan.	Ex.R28 — 13-03-2014	Copy of reply letter given by 2nd petitioner.
Ex.R10 —	Letter, dated 05-02-2015 submitted by the A. Sakthivel.	Ex.R29 — 19-03-2014	Copy of the letter sent to 1st petitioner regarding appointment of Enquiry Officer.
Ex.R11 — 19-09-2008	Original leave application from the 2nd petitioner.	Ex.R30 — 19-03-2014	Copy of the letter sent to 2nd petitioner regarding appointment of Enquiry Officer.
Ex.R12 — 10-02-2009	Original leave application from the 2nd petitioner.	Ex.R31 — 16-04-2014	Copy of Suspension allowance given to 1st petitioner.
Ex.R13 — 18-02-2010	Original leave application from the 2nd petitioner.	Ex.R32 — 16-04-2014	Copy of Suspension allowance given to 2nd petitioner.
Ex.R14 — 28-09-2012	Original leave application from the 2nd petitioner.	Ex.R33 — 09-07-2014	Copy of Suspension allowance given to 1st petitioner.
Ex.R15 — 28-10-2013	Original leave application from the 2nd Petitioner.	Ex.R34 — 09-07-2014	Copy of Suspension allowance given to 2nd petitioner
Ex.R16 — 25-05-2013	Copy of Dismissal Order of 1st petitioner.	Ex.R35 — 21-07-2014	Copy of Letter sent to 1st petitioner regarding intimation of enquiry proceedings.
Ex.R17 — 25-05-2013	Copy of Dismissal Order of 2nd petitioner.	Ex.R36 — 25-07-2014	Copy of Letter sent to 2nd petitioner regarding intimation of enquiry proceedings.
Ex.R18 — 31-07-2013	Copy of the 12(3) settlement entered between the respondent management and its 6 workers.	Ex.R37 — 25-07-2014	Copy of Letter sent by 1st petitioner to the Enquiry Officer seeking permission to appoint Counsel on his side.
Ex.R19 — 11-12-2013	Copy of FIR No. 115/2013 registered by the Mettupalayam Police Station, against the petitioner 1, 2 workmen.	Ex.R38 — 25-07-2014	Copy of Letter sent by 2nd petitioner to the Enquiry Officer seeking permission to appoint Counsel on his side.
Ex.R20 — 28-12-2013	Copy of final report in FIR No. 115/13.	Ex.R39 — 08-08-2014	Copy of Letter sent by 1st petitioner to the Enquiry Officer seeking adjournment Xerox.
Ex.R21 — 24-12-2013	Copy of Suspension Order of 1st petitioner.	Ex.R40 — 08-08-2014	Copy of Letter sent by 2nd petitioner to the Enquiry Officer seeking adjournment.
Ex.R22 — 24-12-2013	Copy of Suspension Order of 2nd petitioner.	Ex.R41 — 22-08-2014	Copy of Letter sent by 2nd petitioner to the Enquiry Officer seeking adjournment.
Ex.R23 — 17-02-2014	Copy of Suspension allowance given to 1st petitioner.	Ex.R42 — 08-09-2014	Copy of Letter sent by 1st petitioner to the Enquiry Officer seeking adjournment.
Ex.R24 — 17-02-2014	Copy of Suspension allowance given to 2nd petitioner.		
Ex.R25 — 04-03-2014	Copy of show-cause notice given to 1st petitioner.		
Ex.R26 — 04-03-2014	Copy of show-cause notice given to 2nd petitioner.		
Ex.R27 — 13-03-2014	Copy of reply letter given by 1st petitioner.		

Ex.R43 — 23-09-2014	Copy of Letter sent by the Presenting Officer of the company to the Enquiry Officer for examination of witness and mark documents.	Ex.R56 — 04-06-2015	Copy of Letter given by 2nd petitioner to the Labour Officer (Conciliation), Puducherry.
Ex.R44 — 17-10-2014	Copy of enquiry report submitted by Enquiry Officer.	Ex.R57 — 17-02-2015	Copy of Letter given by 1st petitioner to the Labour Officer (Conciliation), Puducherry to reopen, to set aside <i>ex parte</i> order.
Ex.R45 — 25-10-2014	Copy of Letter sent to 1st petitioner furnishing copy of enquiry report and intimation of proposed punishment and seeking explanation.	Ex.R58 — 17-02-2015	Copy of Letter given by 2nd petitioner to the Labour Officer (Conciliation), Puducherry to reopen, to set aside <i>ex parte</i> order.
Ex.R46 — 25-10-2014	Copy of Letter sent to 2nd petitioner furnishing copy of enquiry report and intimation of proposed punishment and seeking explanation.	Ex.R59 — 20-04-2015	Copy of reply submitted by the respondent management to the Labour Officer (Conciliation), Puducherry for the notice No. 254/LO(C)/AIL, dated 23-03-2015 regarding the representation, dated 17-02-2015 given by 1st petitioner.
Ex.R47 — 22-03-2014	Copy of Letter sent by 1st petitioner to the respondent company.	Ex.R60 — 20-04-2015	Copy of reply submitted by the respondent management to the Labour Officer (Conciliation), Puducherry for the Notice No. 253/LO(C)/AIL, dated 23-03-2015 regarding the representation, dated 17-02-2015 given 2nd petitioner.
Ex.R48 — 30-04-2014	Copy of reply letter sent by the respondent to 1st petitioner.	Ex.R61 — 27-02-2017	Copy of failure report submitted by the Labour Officer (Conciliation), Puducherry to the Government.
Ex.R49 — 07-11-2014	Copy of Dismissal order sent to 1st petitioner.	Ex.R62 — 01-07-2017	Copy of Authorisation letter given by the respondent to RW.1-P.T. Manoharan Original.
Ex.R50 — 07-11-2014	Copy of Dismissal order sent to 2nd petitioner.	Ex.R63 — —	Copy of the Stock Register of the respondent management for the period from April 2012 to March 2013.
Ex.R51 — 22-03-2014	Copy of Letter sent by the 2nd petitioner to the respondent management.		
Ex.R52 — 30-04-2014	Copy of reply letter sent by the respondent to 2nd petitioner.		
Ex.R53 — 24-01-2015	Copy of reply sent by the respondent 1st petitioner denying to reopen the enquiry, <i>ex parte</i> order, and terminal benefit cheque.		
Ex.R54 — 24-01-2015	Copy of reply sent by the respondent 2nd petitioner denying to reopen the enquiry, <i>ex parte</i> order, and terminal benefit cheque,		
Ex.R55 — 04-06-2015	Copy of Letter given by 1st petitioner to the Labour Officer (Conciliation), Puducherry.		

**V. PANDIARAJ,**  
Presiding Officer,  
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